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Attorneys for the Public Utility Commission of Oregon and its Commissioners

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WESTERN RADIO SERVICES CO.,  
an Oregon Corporation,

Plaintiff,

v.

CENTURYTEL OF EASTERN OREGON,  
INC., and PUBLIC UTILITIES  
COMMISSION OF OREGON (PUC),

Defendants.

Case No. 6:09-cv-06315-AA

THE PUBLIC UTILITY COMMISSION OF  
OREGON'S MOTION TO DISMISS FIRST  
AMENDED COMPLAINT

Pursuant to FRCP 12(b)(1) and 12(b)(6)

Request for Oral Argument

**Certificate of Conferral**

Pursuant to Local Rule 7.1(a) of the District of Oregon, counsel for State defendant the Public Utility Commission of Oregon ("Commission")<sup>1</sup> certifies that he has conferred in good

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<sup>1</sup> The Commission's statutory title is "Public Utility Commission of Oregon." *See* ORS 756.014(1). The Commission understands plaintiff will amend the caption of its complaint from "Public *Utilities* Commission of Oregon" (emphasis added) to "Public *Utility* Commission of Oregon" to accurately reflect the Commission's legal title.

faith with counsel for plaintiff Western Radio Services Co. (“Western”) concerning the motion presented and has been unable to resolve the issues in dispute.

### **Request for Oral Argument**

Pursuant to Local Rule 7.1(e)(2), counsel for the Commission requests oral argument of this motion. Oral argument should take approximately 60 minutes for all parties combined. Court reporting services are required.

### **Motion**

Pursuant to Federal Rules of Civil Procedure (“FRCP”) 12(b)(1) and 12(b)(6), the Commission moves this Court for an order dismissing plaintiff’s fifth cause of action from its “First Amended Complaint (Telecommunications Act) with Jury Trial Requested” (“Complaint”). In the alternative, even though the remaining first four causes of action are not directed against the Commission, the Commission requests the Court for an order dismissing plaintiff’s Complaint in its entirety. The bases for dismissal under FRCP 12(b)(1)(lack of subject matter jurisdiction) and 12(b)(6)(failure to state a claim upon which relief may be granted) include:

1. The Court has no jurisdiction to consider Western’s fifth cause of action in its Complaint until the Commission approves or rejects an interconnection agreement;
2. The Court has no jurisdiction to consider Western’s fifth cause of action because plaintiff has a more appropriate remedy before the Federal Communications Commission; and
3. The Court has no jurisdiction to consider Western’s first four causes of action because the Commission has not approved or rejected an interconnection agreement and for reasons of “prudential limitation on adjudication.”

The Commission has no comment on plaintiff’s request for a jury trial in the caption of its Complaint because Western clarified in its March 9, 2010 submission to this Court captioned

“Plaintiff’s unopposed motion for first extension of court-established deadlines and for establishment of briefing schedule” that it agreed it has no right to a jury trial against the Commission (plaintiff’s fifth cause of action is the only claim against the Commission).

The Commission’s motion is supported by the accompanying Memorandum.

DATED this 29<sup>th</sup> of April, 2010.

Respectfully submitted,

John R. Kroger  
Attorney General

s/Michael T. Weirich  
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Assistant Attorney General  
Of Attorneys for Defendants Commission